

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

WAYNE DALE KELLBERG,

Plaintiff,

vs.

HBO PRODUCTIONS INC.
CHRISTINA,

Defendants.

CV 20-00152-M-DLC-KLD

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Plaintiff Wayne Kellberg, appearing pro se in this action, has filed a motion to proceed in forma pauperis under 28 U.S.C. § 1915(a) and submitted a proposed Complaint. (Docs. 1, 2.) A district court has discretion to deny leave to proceed in forma pauperis under 28 U.S.C. § 1915(a) “if it appears from the face of the proposed complaint that the action is frivolous or without merit[,]” i.e. lacking any arguable basis in fact or law. *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “A document filed pro se is ‘to be liberally construed,’ and ‘a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Erickson v. Pardu*, 551 U.S. 89, 94 (2007); cf. Fed. Rule Civ. Proc. 8(e) (“Pleadings must be construed so as to do justice”).

Mr. Kellberg names HBO Productions Inc. and Christina (camera crew) as

Defendants in this action but he fails to present any factual allegations giving rise to a claim. The form Mr. Kellberg used for filing his Complaint specifically provides the following instructions in the Statement of Claim section of the form:

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

(Doc. 2 at 4, ¶ III.) Despite these instructions, Mr. Kellberg provided no information regarding his statement of claims. The only indication of the nature of his claims is that he stated, "pain & suffering, attempted setups, blackmail" as a basis for federal jurisdiction. (Doc. 2 at 3.) He does not present any facts describing what Defendants allegedly did or failed to do, that would subject them to liability under any legal theory. Even with liberal construction of Mr. Kellberg's pleading, the Court finds his allegations fail to state a claim upon which relief could be granted as required by Rule 8(a) of the Federal Rules of Civil Procedure. The allegations are frivolous and state no arguable basis in fact or law.

Mr. Kellberg is no stranger to this Court having filed eight lawsuits in the last two years. He knows how to allege facts to support his claims because he did so in Civil Action Nos. 18-176-M, 18-204-M, and 19-37-M. In addition, he knows the Court cannot act on allegations that do not exist, because the Court dismissed

Civil Action Nos. 18-106-M, 19-50-M, and 20-142-M on that basis.

Mr. Kellberg's Complaint is frivolous and lacks any arguable basis in fact or law. Therefore, it is appropriate to deny his motion to proceed in forma pauperis.

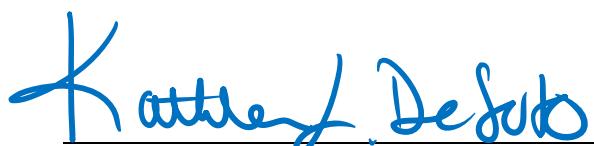
Mr. Kellberg is not entitled to a fourteen-day period to object. *See Minetti*, 152 F.3d at 1114. No motion for reconsideration will be entertained.

Based upon the following, the Court issues the following:

RECOMMENDATIONS

Mr. Kellberg's Motion for Leave to Proceed in Forma Pauperis (Doc. 1) should be DENIED. The Clerk of Court should be directed to close this matter should Mr. Kellberg fail to pay the \$400.00 filing fee within 14 days of the adoption of these Recommendations.

DATED this 13th day of October, 2020.



Kathleen L. DeSoto
United States Magistrate Judge